

market power of media conglomerates like Hearst-Argyle over independent cable companies:

- Using retransmission consent rights to increase the costs of cable services in smaller markets.
- Using retransmission consent rights to force carriage of undesired satellite services in smaller markets.
- Control of retransmission consent rights by satellite programming entities instead of the broadcast licensee.

The following examples show that GE/NBC is employing similar tactics.

4. GE/NBC

Multi-industry conglomerate GE controls NBC stations in many markets along with several affiliated satellite programming services. ACA members are facing increasing demands by O&O NBC stations to carry additional satellite programming as a condition of retransmission consent, with costly consequences for smaller market cable customers.

a. Tying of retransmission consent for NBC/ refusal to deal with small operator competing with major MSO .

One ACA member described the following situation. The cable operator operates one small system serving less than 2,000 customers. The system competes with a *top* three MSO. The MSO's system carries both the in-market NBC affiliate, and an O&O NBC station from an adjacent market. The small

operator carries the in-market NBC affiliate and sought consent to carry the adjacent O&O NBC station as well.

A representative of the cable company contacted the senior executive at the station. After initial conversations, the cable operator was informed that all discussion must take place with NBC cable network representatives in a distant city. NBC cable then conditioned carriage of the broadcast signal on the following:

- Carriage of, and payment for, MSNBC.
- Carriage of, and payment for, CNBC.
- Carriage of Valuevision.
- Payment of a substantial multi-year surcharge for additional Olympic coverage on MSNBC and CNBC.

The small cable operator indicated that it could not accommodate the additional channels and cost. NBC cable refused to negotiate further. As a result, the cable operator still does not offer the NBC station offered by its major MSO competitor.

- b.* Tying ~~of~~ retransmission consent for **NBC** to carriage **of** **MSNBC, CNBC**, and payment ~~of~~ Olympics surcharge.

Another ACA member faced a similar situation in dealing with an O&O NBC station in another market. As conditions of carriage of the NBC broadcast signal for three years, the cable operator was required to sign multi-year

agreements to carry MSNBC. CNBC. Valuevision, and pay a substantial surcharge for the Olympics.

This situation provides a telling example of how corporate parents are supplanting broadcast stations in the retransmission consent process. The representative of the cable operator handling this negotiation had developed over the years a good working relationship with the senior management of the broadcast station. But in the 2000 – 2001 election cycle, the station did not participate in the negotiations. NBC cable network representatives reportedly stated that they now spoke for the station. The station's general manager reportedly confided that the "station was a pawn", and he could do nothing.

This situation demonstrates three consequences of the overwhelming market power of media conglomerates like GE/NBC over independent cable companies:

- Using retransmission consent rights to increase the costs of cable services for smaller cable systems.
- Using retransmission consent rights to force carriage of satellite services.
- Control of retransmission consent rights by satellite programming entities instead of the broadcast licensee.

For ACA members, the above examples of retransmission consent tying provide just a glimpse of increasing marketplace failure. When seeking retransmission consent for network programming from companies like Disney,

Fox, Hearst-Argyle and NBC, independent cable operators have little or no bargaining power. The concept of "retransmission consent negotiations" does not apply. Smaller cable companies must deliver network programming to their customers, and the in-market network broadcaster has a virtual monopoly over the service. The media conglomerates discussed above are fully exploiting their monopoly power through retransmission consent tying.

The consequences? Forced carriage of unwanted programming, higher costs *to* consumers, and decreased programming diversity. These problems are exacerbated by onerous nondisclosure terms imposed as part of retransmission consent tying arrangements, shielding the conduct of network owners from scrutiny.

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. **20554**

In the Matter of)	
)	
Petition for Inquiry Into)	MB Docket No. _____
Retransmission Consent Practices)	
)	
To: The Commission)	



PETITION FOR INQUIRY
INTO RETRANSMISSION CONSENT PRACTICES

FIRST SUPPLEMENT

I. INTRODUCTION AND SUMMARY

On October 1, 2002, ACA filed with the Commission a *Petition for Inquiry Into Retransmission Consent Practices*.¹ The Petition asks the Commission to investigate how a handful of network owners and major affiliate groups are abusing retransmission consent in dealing with smaller cable operators. This Supplement provides the Commission with additional, ongoing examples of retransmission consent abuse by network owners and major affiliate groups. Media conglomerates like Disney/ABC, Fox/News Corp., and others continue to force "take it or leave it" tying arrangements and other unreasonable and costly terms on small cable operators. This continuing and

¹ *Petition for Inquiry into Retransmission Consent Practices*, American Cable Association (filed October 1, 2002) ("Petition").

pervasive abuse of market power against the small cable sector underscores the need for prompt Commission action.

This Supplement contains eleven current examples of retransmission consent tying arrangements being forced on small cable operators around the country. From California to Florida to Minnesota to Texas, small cable operators report that network owners like Disney/ABC and Fox/News Corp are tying consent to carry a local network broadcast station to carriage of, and payment for, one or more channels of affiliated satellite programming. The reports contained in this Supplement include statements from system owners, managers, one elected official, and a local cable Commission. Each of the statements attests to "take it or leave it" tying arrangements forced on small operators. Each of these statements also describes the public interest harm caused by this exploitation of local broadcast licenses. Uniformly, small cable operators report how retransmission consent abuse results in increased costs for cable services and decreased consumer choice and program diversity.

The examples below show how media consolidation and abuse of market power have upended the intent of the retransmission consent laws. In implementing Section 325, the Commission unequivocally stated that "the statutory goals at the heart of Sections 614 and 325 [are] to place local broadcasters on a more even competitive level and thus help preserve local broadcast service to the public," and that retransmission consent is to provide "incentives for both parties to come to mutually-

² *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage issues, Memorandum Opinion and Order*, 9 FCC Rcd. 6723 (1994) ("1994 Broadcast Signal Carriage Order") at ¶ 104

beneficial arrangements.”³ As shown in this Supplement, when small cable operators confront network owners, retransmission consent is anything but local, and anything but mutually beneficial.

These examples also portray the network owners' stark disregard for local needs and interests. Cable operators report explaining to executives from Disney or *Fox* that their small town customers do not want the additional programming and do not want higher cable rates. The executives from distant corporate offices could care less. For these conglomerates, revenue goals for satellite channels have displaced localism and genuine public service to smaller communities.

No legitimate public interest basis exists for this conduct. As requested in the Petition, the Commission should initiate an inquiry into the pervasive abuse of market power and the harm resulting in markets served by smaller cable systems.

Summary of Petition *for Inquiry*. ACA's Petition asks the Commission to investigate the retransmission consent tying arrangements forced on smaller market cable companies by a few media conglomerates. The Petition follows the Commission's express recognition of this serious issue in the *Digital Must Carry Order*. In that Order, the Commission acknowledged small cable's "important concerns" concerning retransmission consent tying and committed "to monitor the situation with

(emphasis added)

³ *Id.* at ¶ 115 (emphasis added); See also ¶ 107 (interpretation of Section 325 guided by maintaining ability of broadcasters and cable operators to negotiate mutually advantageous arrangements).

respect to potential anticompetitive conduct by broadcasters in this context.”⁴ Upon a showing that tying arrangements harm small cable operators and their subscribers, the Commission would “consider appropriate courses of action.”⁵

As described in the Petition, when dealing with small cable operators, powerful players like Disney/ABC, Fox/News Corp., GEINBC, and Hearst-Argyle have converted retransmission consent negotiations into one-way conversations driven by corporate strategies to increase satellite programming revenues. As a condition of access to free, over-the-air, local news and innetwork programming, these conglomerates force small cable operators and their customers to pay for a wide range of satellite services and accept other onerous conditions of carriage. These tying arrangements and carriage conditions harm smaller cable companies and their customers by increasing basic cable costs and decreasing programming choices.

The Commission has ample authority to investigate retransmission consent tying and other abuses of inmarket power. As described in the Petition, this conduct:

- conflicts with the intent and purpose of Section 325 to promote mutually beneficial carriage arrangements;⁶

⁴ *In the Matter of Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-22 (rel. January 23, 2001) (“*Digital Must Carry Order*”) at ¶ 35 (referencing comments of the Small Cable Business Association, the former name of ACA), ¶ 121, and *Final Regulatory Flexibility Analysis*, ¶ 20.

⁵ 47 USC § 325(b)(1)(A); *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage issues, Report and Order*, 8 FCC Rcd. 2965 (1993) at ¶ 173; *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast*

- adds substantial costs to basic cable service in smaller markets;¹ and
- may constitute unauthorized changes in control when retransmission consent policies for local broadcast licensees are controlled by affiliated satellite programming entities.²

The Petition and this Supplement provide the Commission with substantial evidence of the harms caused by the pervasive abuse of retransmission consent by network owners and major affiliate groups in their dealings with small cable operators.

American Cable Association ACA represents nearly 1,000 independent cable companies that serve about 75 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems that focus on small markets. About half of ACA's members serve less than 1,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in lower density markets. Many ACA members have been on the receiving end of retransmission consent tying and face increasing retransmission abuses in the current round of negotiations.

Signal Carriage Issues, Memorandum Opinion and Order, 9 FCC Rcd. 6723 (1994) ("1994 Broadcast Signal Carriage Order") at ¶¶ 22, 104, 107, 115. See also Petition at 8-11.

¹ 47 USC § 325(b)(3)(A). See also Petition at 12-13

II. ADDITIONAL EXAMPLES OF CURRENT, ONGOING RETRANSMISSION CONSENT TYING

We provide below summaries of eleven reports of retransmission consent tying demands by Disney/ABC and Fox/News Corp. These examples show:

- Affiliated programming entities taking control of retransmission consent rights formerly exercised by local broadcasters
- The network owners' "take it or leave it" approach *to* retransmission consent with small cable operators.
- Explicit tying of retransmission consent *to* carriage of one or more affiliated satellite network.
- Complete disregard for local needs and interests in smaller markets

This Supplement provides a telling glimpse into the widespread public interest harms in smaller markets caused by unprecedented media consolidation and unbridled use of market power. We begin with Disney/ABC.

A. Disney/ABC

ACA members report ubiquitous abuse of retransmission consent in dealing with Disney for consent to carry Disney/ABC O&O stations. The following examples describe Disney's consistent approach when dealing with small cable operators - explicit "take it or leave it" tying arrangements, and no concern for local needs and interests

⁸ 47 USC § 301(d) See *also* Petition at 13-14

Matrix Cablevision/KGO – San Francisco

Matrix Cablevision is a quintessential small cable operator. The family-owned company operates two cable systems serving small communities on the fringes of the San Francisco DMA. Combined, the systems serve less than 1,200 subscribers. Mr. Brad Daniel owns, operates, and maintains the cable systems. Exhibit 1 contains a letter from Mr. Daniel explaining his dealings with Disney/ABC.⁹

KGO is the ABC station serving the San Francisco DMA. Disney Enterprises, Inc. owns KGO. Matrix Cablevision's systems have carried KGO for many years. Mr. Daniel reports that a Disney executive recently contacted him regarding retransmission consent for KGO. The representative stated to Mr. Daniel that his systems must carry Disney-owned SoapNet to obtain consent to carry KGO. Mr. Daniel informed the Disney representative that his subscribers did not want SoapNet.¹⁰ Disney's response? If Matrix Cablevision did not add SoapNet, it would lose KGO."

Catalina Cable TV/KABC – Los Angeles

Catalina Cable TV operates the cable system on Catalina Island, California. The system serves fewer than 1,500 subscribers and falls within the Los Angeles DMA. Mr. Ralph Morrow owns and operates the system. Mr. Morrow is also the elected mayor of the Town of Avalon, California, placing him on the front lines of defending the public

⁹Exhibit 1, letter dated November 18, 2002, to Ms. Emily Denney, Cinnamon Mueller, from Mr. Brad Daniel, President, Matrix Cablevision, Inc.

¹⁰ *id.*

¹¹ *id.*

interest in his community. Exhibit 2 contains a letter from Mr. Morrow explaining his dealings with Disney/ABC¹²

KABC is the ABC station serving the Los Angeles DMA. Disney Enterprises, Inc. owns KABC. To obtain retransmission consent for KABC, Mr. Morrow could not deal with KABC personnel. Instead, he was routed to programming executives at Disney. As a condition of retransmission consent, Disney has insisted that Mr. Morrow's small system carry SoapNet. As explained by Mr. Morrow in his letter, "ABC forced us to put the SoapNet on."¹³

Disney has also demanded that Catalina Cable move the Disney Channel to basic. The demographics of Catalina Island include a substantial population of retired or semi-retired persons, hardly the Disney Channel's target demographic. As explained by Mr. Morrow, moving Disney to basic would substantially increase basic rates. Disney would not negotiate. Mr. Morrow states, "Disney was unwilling to compromise or work with me in any way whatsoever."¹⁴

StarVision/ WTVD – Raleigh Durham

StarVision operates a small cable system serving Clinton, North Carolina, and surrounding Sainpson County. The area falls within the Raleigh Durham DMA. The system serves rural portions of the DMA between large systems operated by Time Warner and Charter Communications. Exhibit 3 contains a report from Mr. Larry King

¹² Exhibit 2, letter dated November 24, 2002, to the American Cable Association from Mr. Ralph J. Morrow, Jr., Catalina Cable TV Co.

¹³ /d

of StarVision that explains his dealings with Disney/ABC.¹⁵

WTVD is the ABC station serving the Raleigh Durham area. Disney Enterprises, Inc owns WTVD. To obtain retransmission consent for WTVD, Mr. King could not deal with WTVD personnel. Instead, he was directed to a representative of ABC Network Group. Mr. King reports that as a condition of retransmission consent for WTVD on his small system, Disney demanded one of the following:

- Carriage of the Disney Channel, Toon Disney, and Soap Net; or
- Payment of \$0.70 per subscriber per month for the local broadcast station only.

As reported by Mr. King, Disney "will not budge" from this position."

The cash for carriage "alternative" is a sham. National ABC feeds via satellite are available for a fraction of the cost.¹⁷ But Mr. King could not carry an alternative ABC, because WTVD is entitled to block this transaction through the network-nonduplication and syndicated exclusivity regulations.

As Mr. King points out, Disney's conduct results in higher costs for basic services and unwanted programming on his system."

¹⁵ Exhibit 3, report dated November 25, 2002, to the American Cable Association, from Mr. Larry King, Starvision.

¹⁶ *Id*

¹⁷ For example, KMGH-TV, an ABC affiliate in Denver, is available via satellite for \$0.15 per subscriber per month.

Mid-Coast Cable Television/KTRK – Houston

Mid-Coast Cable Television operates two systems that serve five small communities located on the Gulf of Mexico. The systems serve about 6,400 subscribers in the Houston DMA. Mr. Wayne Neal is Vice President and General Manager of the systems. Exhibit 4 contains Mr. Neal's report of his dealings with ABC/Disney.¹⁹

KTRK is the ABC station serving the Houston DMA. ABC Cable Network Group controls both KTRK and Disney's satellite channel. To obtain retransmission consent for KTRK, Mr. Neal reports that he has been required to deal with representatives from the Disney satellite programming side of the ABC Network Group's business. In the last two rounds of retransmission consent (1996 & 1999), Mr. Neal reports that Disney tied retransmission consent first to carriage of ESPN II, and then to SoapNet. In this round, Disney is tying carriage of the Disney Channel on basic as a condition of consent to carry KTRK. Carriage of the Disney Channel would increase the costs of basic cable at least \$0.85 per month for each customer. Mr. Neal states that "our customers are happy without Disney."²⁰ Adding Disney to basic would force more than 6,400 customers to pay for something they "apparently do not want."²¹

Disney has also proposed \$0.70 per customer per month *for* KTRK only. The

¹⁸ *id.*

¹⁹ Exhibit 4, letter dated November 19, 2002, from Mr. Wayne Neal, Vice President and General Manager, Mid-Coast Cable Television, L P.

²⁰ *id.*

²¹ *id.*

cash "alternative" is a sham. A satellite feed of ABC is available at a fraction of the cost, and the KTRK signal is available with a rooftop antenna for free. Of course, KTRK will use network nonduplication and syndicated exclusivity to block a competitive ABC service

Mr. Neal sums up his situation as most small cable operators do – "This has got to stop somewhere. Neither our customers nor us can afford it."²²

As the reports on Disney/ABC demonstrate, the problems of retransmission consent tying pervade all markets where Disney controls broadcast licenses and where small cable operators serve customers. As discussed below, the same goes for Fox O&O markets.

B. Fox/News Corp.

ACA members report extensive abuse of retransmission consent in dealing with Fox and Fox Cable Networks. The following examples show fox's consistent approach to dealing with small cable operators - explicit 'take it or leave it' tying arrangements and complete disregard for local needs and interests

Catalina Cable TV/KTTV Fox – Los Angeles

Catalina Cable TV operates the cable system on Catalina Island, California. The system serves fewer than 1,500 subscribers and falls within the Los Angeles DMA. Mr. Ralph Morrow owns and operates the system. Mr. Morrow is also the elected mayor of Avalon, California, placing him on the front lines of protecting the public interest.

²² *Id*

Exhibit 2 contains a letter from Mr. Morrow describing his dealings with Fox.²³

KTTV is the Fox station serving the Los Angeles DMA. Fox Television Stations, Inc. owns KTTV. The same owner controls KCOP, the UPN affiliate in the Los Angeles DMA. To obtain retransmission consent for KTTV, Mr. Morrow must deal with representatives of Fox Cable Networks. Mr. Morrow reports that Fox is explicitly tying retransmission consent for KTTV to carriage of the new Fox Digital Nets. Fox is also demanding substantial increases to rates for Fox Sports Channels 1 and 2, which are also tied to retransmission consent. Mr. Morrow explains, "I have not signed the contracts yet. It is still *out* of the question. It will FORCE me to raise my rates."²⁴ Yet if he does not sign the contracts for costly Fox Sports channels, his customers may lose the local Fox station.

Griffin Broadband/KTTV Fox – Los Angeles

Griffin Broadband operates a small cable system serving the Army base located in Fort Irwin, California. Mr. Phil Trammell serves as Executive Vice President of Griffin Broadband. Exhibit 5 contains a letter to Media Bureau Chief Ken Ferree that describes the consequences of retransmission consent tying for the business.²⁵

KTTV is the Fox station serving the Los Angeles DMA. Fox Television Stations,

²³ See Exhibit 2, letter dated November 24, 2002, to the American Cable Association from Mr. Ralph J. Morrow, Jr., Catalina Cable TV Co.

²⁴ *Id.*

²⁵ Exhibit 5, letter dated October 21, 2002, to Mr. W. Kenneth Ferree, Bureau Chief, Media Bureau, FCC, from Mr. Phillip W. Trammell, Executive Vice President, Griffin Broadband Communications.

Inc. owns KTTV. To obtain retransmission consent for KTTV, Mr. Trammel was directed to representatives of Fox Cable Networks. Fox expressly tied retransmission consent for KTTV to carriage of the National Geographic Channel. As a consequence, due to limited channel capacity, Griffin Broadband was forced to scuttle plans to launch a desired satellite channel not affiliated with Fox/News Corp.

In other words, Fox wins; independent programmers and program diversity lose.

Plantation Cablevision, Inc./WAGA – Atlanta

Plantation Cablevision operates a small system serving about 3,000 subscribers in rural portions of Greene County, Georgia. Greene County falls within the Atlanta DMA. Exhibit 6 contains a report from Mr. Joel Hall, General Manager, describing his dealings with fox²⁶

WAGA is the Fox station serving the Atlanta DMA. Fox Television Stations, Inc. owns WAGA. Fox is expressly tying retransmission consent for WAGA to carriage on Plantation's small system three Fox affiliated channels on Plantation Cable's small system – Fox Sports Digital Atlantic; Fox Sports Digital Central, and Fox Sports Digital Pacific. Mr. Hall states, correctly, that Congress did not intend retransmission consent as a vehicle for broadcasters and satellite programmers to decide what stations his customers see.²⁷ Rather, "our customers should have the right to choose what stations they would like to see."²⁸

²⁶ Exhibit 6, letter dated November 19, 2002, to Ms. Emily Denney. Cinnamon Mueller, from Mr. Joel Hall, General Manager, Plantation Cablevision, Inc.

²⁷ *Id*

²⁸ *Id*

Cannon Valley/KMSP and WFTC – Minneapolis/St. Paul

Cannon Valley Cablevision operates small systems serving about 2,000 subscribers in nine rural communities within the Minneapolis-St. Paul DMA. Mr. Scott W. Johnson is President of the small system. Exhibit 7 contains Mr. Johnson's report of his dealings with Fox.²⁹

KMSP is the UPN station serving the Minneapolis-St. Paul DMA. WFTC is the fox station serving the Minneapolis-St. Paul DMA. Both KMSP and WFTC are owned by Fox Television Stations, Inc. To obtain retransmission consent for both stations, Fox representatives have indicated that the system will have to carry Fox satellite services in lieu of "substantial" but unspecified retransmission fees.³⁰ Without being more specific, the Fox representative stated that fees could reach as high as \$1.00 per subscriber.³¹

In an attempt to negotiate, Mr. Johnson notified Fox that HITS QT was installed in Cannon Valley's largest system and that the Fox programming was included in that system's lineup.³² This effectively satisfied the mandates for that system and that system was off the negotiating table. In exchange for this, Mr. Johnson requested a "credit" for existing Fox satellite services that were added the previous year. The

²⁹ Exhibit 7, report dated November 25, 2002, from Mr. Scott W. Johnson, President, Cannon Valley Cablevision, Inc.

³² HITS QT provides a lower cost digital solution for certain smaller systems. See www.hits.com.

representative would not negotiate on this point and indicated that Mr. Johnson would have to add an additional Fox service in each of the other systems to avoid paying retransmission fees. Mr. Johnson asked that this proposal be put in writing – as of the date of this Supplement, he has received nothing.

Mr. Johnson reports that retransmission consent tying and rising programming costs have raised the costs of basic cable in his systems, and are hurting his company's ability to compete against DBS providers.

Sunflower Broadband/WDAF, Kansas City

Sunflower Broadband operates an independent cable system serving about 30,000 customers in Lawrence, Kansas and surrounding communities. Sunflower Broadband is a family-owned business that has been in operation for over 35 years. Located within the Kansas City DMA, the small system has carried WDAF for many years.

Fox Television Stations Inc. controls WDAF. To obtain retransmission consent for WDAF, Sunflower Broadband management has been directed to deal with executives from Fox Cable Networks. Exhibit 8 contains the retransmission consent proposal received by Sunflower Broadband from Fox Cable Networks for the carriage of WDAF.³³

The Fox proposal emphasizes the "take it or leave it" explicit tying that has become Fox's standard operating procedure. The document states, "Retransmission consent proposal for Sunflower Cable *shall* consist of both a cable distribution

³³ Exhibit 8, Fox Cable Networks, Sunflower Cable, Proposal for Retransmission Consent Agreement, November 12, 2002

agreement and retransmission consent agreement. *Both agreements will constitute the complete retransmission consent arrangement.*"³⁴

According to Sunflower Broadband management, Fox now requires all negotiations for WDAF to occur through Fox Cable Networks, with WDAF management out of the loop. Sunflower Broadband reports that its customers do not want to pay for the additional programming, and the company is extremely concerned about rising programming costs and increasing cable rates. As a result, Sunflower Broadband may be forced to delete the broadcast signal from its line-up, directly due to the retransmission consent demands of Fox

Chibardun Cable TV Corporation and CTC Telecom/KMSP and WFTC – Minneapolis/St. Paul

Chibardun Cable TV Corporation is a very small company that serves six rural communities, and a total of just 2,000 customers. CTC Telecom serves three communities with a total of only 1,500 subscribers. Both companies are located within the Minneapolis-St. Paul DMA. Mr. Scott Hickok is Plant Manager of both small systems. Exhibit 9 contains Mr. Hickok's letter to a representative at Fox Cable Networks Group, responding to the station's demands for retransmission consent.³⁵

KMSP is the UPN station serving the Minneapolis DMA. WFTC is the Fox station serving the Minneapolis DMA. Both stations are owned by Fox Television Stations, Inc. To obtain retransmission consent for both KMSP and WFTC, Mr. Hickok

³⁴ *Id.* (emphasis added)

³⁵ Exhibit 9, letter dated November 26, 2002, to Ms. Kate Kingsley, Fox Cable Network Group, from Mr. Scott Hickok, Plant Manager, Telephone Cooperative, Inc.

must deal with a representative of Fox Cable Network Group. For consent to carry the affiliated broadcast signals. Fox is demanding that both systems launch an additional Fox affiliated station, such as Fox Sports North or National Geographic, programming that Chibardun Cable customers do not want but will be forced to pay for. Mr. Hickok states that this demand is "unreasonable and borders on extortion."

City of Wyandotte, Michigan

The City of Wyandotte, Michigan, operates a small cable system within the city limits. The Wyandotte Municipal Service Commission is the public body responsible overseeing the system. Wyandotte falls within the Detroit DMA. WJBK, owned by Fox Television Stations, Inc., is the Fox station in the Detroit DMA.

Exhibit 10 contains the text of Resolution 11-2002-04 adopted by the Commission on November 26, 2002.³⁵ The Resolution describes Fox's explicit tying of retransmission consent for WJBK to carriage by the Wyandotte system of Fox-affiliated satellite channels. The Resolution of the Wyandotte Commission succinctly articulates the public interest harm caused by media consolidation and retransmission consent abuse. It states.

WHEREAS, in the operation of its municipal cable television system the City of Wyandotte is required to negotiate every three years for the right to retransmit certain free, over-the-air local broadcast stations pursuant to the "Retransmission Consent" laws and regulations of the U.S. government: and

WHEREAS, many such free, over-the-air broadcast stations are owned by large media conglomerates that are attempting to use their combined content and market power to force the carriage of additional programming owned by said media conglomerates at the expense of the citizens and

³⁵ Exhibit 10, Resolution 11-2002-04, adopted November 26, 2002, City of Wyandotte, Michigan, Municipal Service Commission.

businesses of the City of Wyandotte: and

WHEREAS, Fox Channel 2 in Detroit is attempting to force the City of Wyandotte to take and pay for an additional channel owned by Fox Channel 2's parent company. Fox Cable Networks, for a period of five to ten years as a condition of allowing Wyandotte's municipal cable system to retransmit Fox Channel 2 to local citizens and businesses for the next three years; and

WHEREAS, the actions of Fox Channel 2 and Fox Cable Networks, if successful, will reduce the choices available to Wyandotte citizens and businesses and increase the cost of basic and/or digital cable television programming services. . . .³⁷

If any doubt remained about the public interest harms resulting from abuse of retransmission consent by network owners, the Wyandotte resolution should erase it. It is an unequivocal statement concerning the harm of retransmission consent abuse. Moreover, it is the official statement of a public body charged with protecting the public interest on the local level, just as the Commission is charged with protecting the public interest nationally.

The eleven examples above, combined with those in the Petition, depict a major problem harming the small cable sector. Small cable operators face overwhelming market power and resources when dealing with media conglomerates like Disney/ABC and Fox/News Corp. These small operators cannot defend against this abuse without help.

³⁷ *Id.*

III. CONCLUSION

The harms of retransmission consent abuse in the markets served by small cable operators are genuine and pervasive and warrant prompt action by the Commission. So long as a handful of media conglomerates can with impunity pull the strings on local retransmission consent and disregard local needs and interests, small cable companies and their customers do not stand a chance.

As stated in ACA's Petition, the problem has at least two solutions: (i) self-discipline by network owners and major affiliate groups in dealing with smaller cable companies; or (ii) increased regulation. As this Supplement shows, network owners have failed to restrain themselves yet again.

At a minimum, the inquiry requested in the Petition should begin

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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EXHIBIT 1

Matrix Cablevision, Inc.